80-1554

No.

Office-Supreme Court, U.S.
FILED
MAR 13 1981
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1980

AMOS DAWE,
Petitioner,

vs.

GLEN E. ROBINSON, United States Marshal
for the Northern District of California,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

EPHRAIM MARGOLIN
240 Stockton Street, 3rd Floor
San Francisco, CA 94108
Telephone: (415) 421-4347
Attorney for Petitioner

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7552

QUESTIONS PRESENTED FOR REVIEW

Whether the summary dismissal of petitioner's appeal by a motions panel of the court below, depriving him of the opportunity to brief and argue the issues presented, denied him his right of appeal and constituted such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Whether the District Court abused its discretion and deprived petitioner of due process of law by denying his request for a reasonable opportunity to gather and present newly discovered evidence to the magistrate bearing on the issue of probable cause.

Whether the District Court, in a habeas corpus proceeding to review a certificate of extraditability issued by a magistrate, should have remanded the case to the magistrate to consider allegations that the demanding state had systematically withheld exculpatory evidence from its submission of documents in support of the extradition request.

TABLE OF CONTENTS

	Page
Questions presented for review	i
Opinions below	1
Jurisdiction	2
Statement of the case	2
Reasons for granting the writ	7
1. The decision of the court below has deprived petitioner of full appellate review, and constitutes such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision	7
2. The district court abused its discretion and deprived petitioner of due process by denying his request for a reasonable opportunity to gather and present newly discovered evidence to the magistrate	10
3. The district court denied petitioner due process of law by failing to remand for consideration of his allegation that crucial exculpatory evidence had been systematically withheld by the demanding state	12
Conclusion	13

TABLE OF AUTHORITIES CITED

Cases

	Page
Blair v. California, 340 F. 2d 741 (9th Cir. 1976)	8
Brady v. Maryland, 373 U.S. 83 (1963)	6, 13
Carlton v. Kelly, 299 U.S. 447 (1913)	8, 9, 11
Collins v. Loisel, 259 U.S. 309 (1922)	11
Coppedge v. United States, 369 U.S. 438 (1962)	8
Dillingham v. Wainwright, 422 F. Supp. 259 (S. D. Fla. 1976)	8
Gerstein v. Pugh, 420 U.S. 103 (1975)	13
Hooker v. Klein, 573 F. 2d 1360 (1978)	8, 7
Jhirad v. Ferrandina, 355 F.Supp. 1155 (S.D.N.Y. 1973)	5
Pembrook v. Wilson, 370 F. 2d 37, (9th Cir. 1960)	8
United States v. White, 2 Wash. C.C. 29, Fed. Cas. No. 16,685 (1807)	9

Constitution

United States Constitution, Fourth Amendment	13

Rules

Federal Rules of Appellate Procedure:	
Rule 27	6
Rule 35	2
Rule 40(a)	2

Statutes

18 U.S.C. § 3184	3
28 U.S.C. § 1254(1)	2

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

AMOS DAWE,
Petitioner,

VS.

GLEN E. ROBINSON, United States Marshal
for the Northern District of California,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

Petitioner Amos Dawe respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on November 17, 1980, a rehearing of which judgment was denied on January 28, 1981.

OPINIONS BELOW

The District Court's order denying the petition for writ of habeas corpus is appended hereto as Appendix A. The Court of Appeals rendered no opinion, but the order of a

motions panel dismissing the appeal is appended hereto as Appendix B. The Court of Appeals' order, dated January 28, 1981, denying the petition for a rehearing appears as Appendix C.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on November 17, 1980. A motion for rehearing, and suggestion of the appropriateness of an *en banc* hearing, filed pursuant to Rules 40(a) and 35 of the Federal Rules of Appellate Procedure, was denied on January 28, 1981. This Court's jurisdiction to review the case on petition for certiorari rests upon 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This case grows out of a complaint filed by the United States on July 23, 1979, seeking petitioner's extradition to the Royal Colony of Hong Kong. The complaint was predicated on a warrant of arrest issued by a Hong Kong magistrate on June 5, 1979, charging petitioner with the offenses of conspiracy to Defraud, Publishing a False Statement and False Accounting in Corporate Transactions. These offenses fall within Article III of the applicable treaty of extradition.

The Hong Kong charges are based upon a complex series of financial transactions which occurred in December 1974, involving a number of East Asian business entities. In documents submitted by the Royal Colony in the proceedings below it is alleged that petitioner Dawe controlled all of these companies. One of them, Mosbert Hold-

ings Limited, was part of a multinational group of companies with broad and diverse interests throughout the Far East, known as the "Mosbert Group."

On or about December 18, 1974 Mosbert Holdings Limited (hereafter "MHL") announced the issue of 91,878,000 shares of stock, at a par of $1.00 Hong Kong currency, to the Development and Commercial Bank (hereafter "D&C") for the stated purpose of raising capital for expansion and investment. Regular entries in the MHL books reflected that MHL was paid in full for these shares, increasing its capital in the amount of $91,878,000 HK. Hong Kong authorities have contended that these entries were false, and were made possible only by what they characterize as a "banking exercise" conducted by and among the various companies referred to above. This term refers to a series of checking transactions entered into by these companies at about the same time as MHL's stock issue. Hong Kong alleges that these companies, including D&C and MHL itself, formed a "closed circle" into which no significant capital was injected, with the result that MHL in effect funded the purchase of its own shares. In short, it is contended that the "banking exercise" was a sham designed by Dawe and others to create a false appearance that MHL had increased its capital as reflected in its books.

On February 20 and 21, 1980, an extradition hearing was conducted before a United States Magistrate for the Northern District of California, to determine whether there existed probable cause to believe petitioner guilty of the crimes alleged. 18 U.S.C. 3184. At this hearing the government, on behalf of the Royal Colony, submitted documents which purported to support the charges outlined

above. The defense, in the main, did not seek to contradict this documentary evidence, but instead contended that the government's submissions were too incomplete to permit an inference of probable cause. This contention was supported by the testimony of two witnesses, both of whom were CPAs and Chartered Accountants familiar with British accounting practice. (Tr. Vol. I pp. 20-126; Vol. II pp. 168-193).[1] They testified that it was impossible, given the documents submitted by the prosecution, to conclude that the banking transactions were a "sham" or that MHL was not paid in full for its shares. (Tr. Vol. II pp. 64-66; Vol. II pp. 171-172, 180).[2] In addition, one of these witnesses found no support in the records submitted pertaining to the various companies for the allegation that Dawe "controlled" all of them. (Tr. Vol. I pp. 43-46). The government presented accountant-witnesses who took issue with these conclusions. (Tr. Vol. II pp. 142-154, 155-167; 194-196).

On February 28, 1980, the magistrate filed his written order finding petitioner extraditable and ordering him committed for delivery to Hong Kong authorities. (Appen-

---

[1]This form of reference is to the two-volume transcript of proceedings before the U.S. Magistrate on February 20 and 21, 1980.

[2]This impossibility, in their view, arose from the incompleteness of the government's submission. The stock issue was valid on its face and the available records indicate that MHL was paid. Without examining both sides of the double-entry bookkeeping employed by the various companies involved in the "banking exercise," they were unable to say that capital was not generated in sufficient amounts to cover the stock purchase. Only the "cash" side of the transactions was provided by the demanding authorities. (Tr. Vol. I pp. 64-66; Vol. II 171-172).

dix D). The latter part of the order was stayed to permit Dawe to petition the District Court for a writ of Habeas Corpus, the proper method of obtaining review in extradition matters. *E.g., Jhirad v. Ferrandina*, 355 F.Supp. 1155 (S.D.N.Y. 1973). Such a petition was filed on March 31, 1980, challenging the finding of extraditability based on the record developed before the magistrate.

Subsequent to the filing of this petition, but before any ruling thereon, petitioner brought to the court's attention his discovery of documentary evidence previously unavailable to him,[3] tending to dispel the inference of probable cause arising from the evidence supplied by the demanding state. Specifically, Dawe offered to show that the Moscow Narodny Bank had contracted with him to purchase all of his interest in Mosbert Holdings Limited. As part of this agreement, which was itself not without complexity, the Soviet bank was to pay into Development and Commercial Bank money sufficient to fund the $91,878,000 HK stock purchase from MHL. Although petitioner performed his side of this bargain, the Moscow Narodny Bank reneged on its commitments.

In communicating these matters to the court, petitioner's counsel attached some supportive documents and averred that the remainder would be available shortly. Accordingly, he requested that the court either continue the habeas proceeding for approximately five weeks or, in the alterna-

---

[3]The record is replete with references to the difficulties presented by the vast global distances encompassed by this litigation, with relevant documents scattered among governments and private entities throughout the Far East. E.g., Tr. pp. 11-12.

tive, remand the proceedings to the magistrate to give petitioner an opportunity to present the evidence being gathered. (D.C. Tr. 13-19).[4] At the same time petitioner alleged that the evidence in question, which tended to absolve him of fraud in connection with the stock issue, had long been in the possession of the Hong Kong authorities, who had selectively excluded it from their submission before the magistrate. (D.C. Tr. pp. 12-14; 16-17). Counsel for petitioner argued that, on the authority of *Brady v. Maryland*, 373 U.S. 83 (1963), an extradition order based on such practice should not be allowed to stand. (D.C. Tr. pp. 12-13, 16).

The court rejected these requests, ruling that its jurisdiction was strictly limited to "inquiring whether the magistrate . . . had sufficient evidence before him." (D.C. Tr. p. 22). The Petition for habeas corpus was denied. (Appendix A). Finding, however, that a proposed appeal from this ruling would not be frivolous, the court granted a stay pending appeal. (D.C. Tr. pp. 22-25).

Notice of Appeal was timely filed; the record was properly designated, and steps were taken to bring the case before the Court of Appeals for review. Then, on October 24, 1980, the government moved to dismiss the appeal, under Rule 27 of the Federal Rules of Appellate Procedure, on the ground that it was "frivolous and dilatory." This motion rested on an assertion that the evidence which Dawe wanted to present was "exculpatory rebuttal evidence" of a character precluded in extradition proceedings.

---

[4]This form of reference refers to the transcript of proceedings before the District Court on July 29, 1980.

On November 17, 1980, approximately two weeks before petitioner's opening brief was to be filed, a motions panel of two circuit judges granted this motion in a terse two line order. (Appendix B). A motion for rehearing, suggesting the appropriateness of an *en banc* hearing, was denied on January 28, 1981. (Exhibit C). Petitioner's motion to stay the mandate pending disposition of the instant petition, filed on February 3, 1981, remains under submission.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE COURT BELOW HAS DEPRIVED PETITIONER OF FULL APPELLATE REVIEW, AND CONSTITUTES SUCH A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION

Less than three weeks before petitioner's opening brief was due to be filed, a motions panel of the court below summarily dismissed his appeal. This was done by means of a terse two sentence order granting the government's motion to dismiss in which it was argued that petitioner's appeal was "frivolous and dilatory." Suggesting an analogy to rules applicable to criminal appeals, the government argued that Dawe's appeal was "frivolous" because it rested on the refusal of the District Court to allow evidence which, in the government's view, was inadmissible in the extradition context.

Assuming the analogy to criminal appeals suggested by the government, this court has established a strict standard

which must be met before an appeal may be dismissed for frivolity:

> Since our statutes and rules make an appeal in a criminal case a matter of right, the burden of showing that that right has been abused through prosecution of frivolous litigation should, at all times, be on the party making the suggestion of frivolity. It is not the burden of the petitioner [attempting to proceed *in forma pauperis*] to show that his appeal has merit, in the sense that he is bound, or even likely to prevail ultimately. *He is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts.*

Coppedge v. United States, 369 U.S. 438, 448 (1962) [emphasis added].

This standard has been scrupulously adhered to by the lower federal courts. See, *Blair v. California*, 340 F. 2d 741, 742 (9th Cir. 1976); *Pembrook v. Wilson*, 370 F. 2d 37, 39 (9th Cir. 1966); *Dillingham v. Wainwright*, 422 F. Supp. 259, 261 (S. D. Fla. 1976).

In its cursory treatment of petitioner's appeal the court below has radically departed from the *Coppedge* standard, as well as from the principles it set forth in *Blair* and *Pembroke*. We have set forth the facts of this case in some detail in order to demonstrate that petitioner's position on appeal, whatever its ultimate merit, was in no sense frivolous. The government's sole argument to the contrary rested on its assertion that the evidence he wanted to produce was precluded by the Ninth Circuit's decision in *Hooker v. Klein*, 573 F. 2d 1360 (1978). In *Hooker* the court, relying on *Carlton v. Kelly*, 299 U.S. 447 (1913),

held that the defense in an extradition hearing "is not permitted to introduce evidence on the issue of guilt or innocence but can only offer evidence that tends to explain the government's case of probable cause." 573 F. 2d at 1368.

Neither *Carlton v. Kelly, supra,* nor its progeny in the lower courts have established workable guidelines for making the crucial distinction between "rebuttal" and "explanatory" evidence in the extradition context. The difficulty with the Ninth Circuit's formulation in *Hooker* is that all evidence offered by one resisting extradition may be said, in some sense, to support his innocence. Thus, it is our reading of the relevant cases that what is prohibited is not simply evidence pointing to innocence but rather evidence which would accomplish this by *contradicting* the proof upon which the demanding state relies to establish probable cause. If, on the other hand, the proffered evidence attacks not the substance of the opposing proof but only the incriminating inferences which are claimed to flow from it, the evidence is "explanatory" and should be allowed into the probable cause equation. See, *United States v. White,* 2 Wash. C.C. 29, Fed. Cas. No. 16,685 (1807).

The matters raised by petitioner at the habeas corpus hearing, while clearly indicative of his innocence, did not contradict or rebut the documentary evidence offered by the demanding state. On the contrary, Dawe's proffered evidence tended to place the other side's proof in context, and to explain that proof in a manner inconsistent with probable cause. It attacked not the factual substance of the opposing evidence, but only the inferences which had been urged to flow from that incomplete submission. Such, we

submit, was the proper function of the limited defense allowed in extradition proceedings.

While disagreeing with this position, the District Court clearly did not regard it as frivolous. In granting a stay of the commitment order pending appeal the court commented:

> I don't think it [petitioner's proposed appeal] is frivolous . . . I think some of the arguments that [petitioner's counsel] has made might well be viewed more charitably by some judge in the Court of Appeals. (D.C. Tr. pp. 24-25).

Petitioner should have been allowed full appellate review of his contentions by a regularly constituted panel of the Court of Appeals. In depriving him of such review the court below has departed from the accepted and usual course of judicial proceedings. This Court should grant *certiorari* and remand to the Court of Appeals with directions to reinstate the appeal.

2. THE DISTRICT COURT ABUSED ITS DISCRETION AND DEPRIVED PETITIONER OF DUE PROCESS BY DENYING HIS REQUEST FOR A REASONABLE OPPORTUNITY TO GATHER AND PRESENT NEWLY DISCOVERED EVIDENCE TO THE MAGISTRATE

This and the following sections are included should this Court grant the petition, but decline to accept petitioner's suggestion that the case be remanded with directions to reinstate the appeal. In that event petitioner asks the Court to reach the merits of the appeal denied him in the Court below.

Petitioner's position in this respect is largely apparent from the preceding section of this petition. He has asked for a brief continuance, or in the alternative for a remand to the magistrate, to enable him to present evidence material to the issue of probable cause. His counsel explained in some detail the difficulties encountered in gathering material, some of which was submitted to the District Court, which had long been in the possession of individuals and business entities scattered throughout the Far East. (D.C. Tr. pp. 11-12). Significantly, the government did not deny that the material in question existed, or question counsel's good faith with respect to what it would show. The prosecution took the position that the evidence was inadmissible in an extradition proceeding, and that the court should deny habeas corpus relief on the record then before it.

We have already set forth our view that the government's position misreads the rule of *Carlton v. Kelly, supra* and *Collins v. Loisel*, 259 U.S. 309 (1922). Evidence of Dawe's arrangements with the Moscow Narodny Bank would absolve him of fraudulent intent with respect to the MHL stock transaction, but it would not "contradict" the government's proof. Thus, the evidence was clearly admissible.

The District Court, without commenting on the admissibility of the evidence, took the view that its only jurisdiction was to pass upon the habeas petition on the basis of the original record before the magistrate. We believe the court took an unduly restrictive view of its power, and its responsibility. While all agree that matters of international extradition should not be unduly protracted, the due proc-

ess interests involved are substantial and should not be sacrificed lightly. Unquestionably, extradition to a foreign jurisdiction constitutes a drastic and irreversible interference with liberty. The relief sought by Dawe was limited in time and purpose. The District Court should have held the writ in abeyance while remanding to the magistrate to permit petitioner to present his evidence on the issue of probable cause.

We ask this Court to grant *certiorari* in order to clarify the crucial but elusive distinction between "explanatory" and "rebuttal" evidence in extradition hearings, and to affirm the District Court's power to protect the fairness and completeness of extradition proceedings.

3. THE DISTRICT COURT DENIED PETITIONER DUE PROCESS OF LAW BY FAILING TO REMAND FOR CONSIDERATION OF HIS ALLEGATION THAT CRUCIAL EXCULPATORY EVIDENCE HAD BEEN SYSTEMATICALLY WITHHELD BY THE DEMANDING STATE

Petitioner's counsel alleged, at the hearing on the habeas petition, that the documents he wanted to introduce had long been in the possession of authorities in Hong Kong. Thus, those authorities must have known of the involvement of the Moscow Narodny Bank and of Dawe's reliance on its commitment to fund the stock purchase by D&C. These documents, however, were excluded from Hong Kong's submission before the magistrate, which included only material tending to imply that Dawe knew that D&C could not pay for the shares.

We believe this conduct, if established, violates the principles set forth in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Gerstein v. Pugh*, 420 U.S. 103 (1975). In *Brady*, this Court held that "[t]he suppression by the prosecution of evidence favorable to an accused upon request violates due process when the evidence is material either to guilt or to punishment . . ." In *Gerstein*, the Court ruled that the Fourth Amendment requires "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." 420 U.S. at 125. Extradition requires such a probable cause determination, which can hardly be "fair and reasonable" if the prosecution systematically excludes evidence favorable to the accused from its presentation before the magistrate.

The Court should grant *certiorari* to decide the application of these principles to extradition hearings, a federal constitutional matter of great importance.

CONCLUSION

For the reasons advanced herein, petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Dated: February 24, 1981.

Respectfully submitted,
EPHRAIM MARGOLIN
Attorney for Petitioner

(Appendices follow)

Appendix A

United States District Court
Northern District of California

No. C-80-1125-WHO

Amos E. Dawe,
Petitioner

vs.

Glen E. Robinson, United States Marshal, etc.,
Respondent.

[Filed Aug. 11, 1980]

ORDER

A hearing on Amos Dawe's Petition for a Writ of Habeas Corpus was held on July 29, 1980. The parties having been given an opportunity to be heard, and the court having been fully advised in the matter,

IT IS HEREBY ORDERED:

1. That the Petition for a Writ of Habeas Corpus be denied on the grounds that the record of the extradition hearing conducted before Magistrate Goldsmith contains substantial evidence to support Magistrate Goldsmith's finding of probable cause to extradite Mr. Dawe to Hong Kong.

2. That the stay of the Certification of Extraditability and Order of Commitment, entered February 28, 1980, by Magistrate Richard S. Goldsmith, remain

in effect during the pendency of an appeal from this Order to the Ninth Circuit Court of Appeals;

3. That Mr. Dawe remain on bail on the terms and conditions previously set by Magistrate Goldsmith; and

4. That the parties report to this Court in writing no later than August 14, 1980, setting forth the status of Mr. Dawe's appeal or, in the alternative, the date set for the transfer of Mr. Dawe to the custody of the Hong Kong authorities.

IT IS SO ORDERED.

DATED: Aug. 11, 1980.

/s/ William H. Orrick
William H. Orrick
United States District Judge

Appendix B

United States Court of Appeals
For the Ninth Circuit

No. 80-4456

DC# CV 80-1125 WHO
Northern California

Amos E. Dawe,
Petitioner-Appellant,
vs.
Glen E. Robinson, United States Marshal for the Northern District of California,
Respondent-Appellee.

[Filed Nov. 17, 1980]

ORDER

Before: KENNEDY and HUG, Circuit Judges

Appellee's motion to dismiss this appeal is granted. The appeal is dismissed.

Appendix C

In the United States Court of Appeals
For the Ninth Circuit

No. 80-4456

Amos E. Dawe,
Petitioner-Appellant,

vs.

Glen E. Robinson, U.S. Marshal, etc.,
Respondent-Appellee.

[Filed Jan. 28, 1981]

ORDER

Before: KENNEDY and HUG, Circuit Judges

The motions panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Appendix D

In the United States District Court
For the Northern District of California

No. 3-79-1319-MG

In Re the Matter of Proceedings for the Extradition of Amos Dawe a/k/a Law Sheng Moh, a Fugitive from the Justice of the United Kingdom, Royal Colony of Hong Kong.

[Filed Feb. 28, 1980]

CERTIFICATION OF EXTRADITABILITY AND ORDER OF COMMITMENT

The United States Attorney filed a complaint on July 23, 1979 against AMOS DAWE. It did so at the request of the United Kingdom, Royal Colony which is seeking extradition of the named defendant to Hong Kong. On June 5, 1979 the Royal Colony of Hong Kong had filed an information against AMOS DAWE charging him with Conspiracy to Defraud, Publishing a False Statement, and False Accounting in Corporate Transactions. These offenses are crimes under the Hong Kong laws and are offenses covered by Treaty between the United States and the United Kingdom of Great Britain and Northern Ireland.

After defendant completed an appropriate affidavit of inability to continue to compensate and retain private counsel, this Court appointed the Public Defender to represent Mr. Dawe at the extradition hearing which it con-

ducted on February 20th and 21st, 1980. The matter is now under submission to the Court for ruling.

Defendant has relied upon two defenses in resisting extradition: The statute of limitations; lack of probable cause. The Court has reviewed the appropriate authorities with respect to the running of the statute of limitations and has concluded that the action is barred neither by the 3-year provisions of California Penal Code Section 800 (as made applicable by Section 22541, California Corporations Code on the complaint which is before the Court), nor the 5-year provision of the controlling federal statute of limitations, 18 U.S.C. § 3282.

The Hong Kong government initiated the action more than three years after the alleged violations of law on the part of defendant but well within the statutory time period if the defendant's absence from Hong Kong is excluded from computation. Such exclusion is required by the Statute itself and has been so construed by the authorities. *People v. Morgan*, 75 Cal.App.3d 32 (1977); *People v. Snowden*, 149 Cal.App.2d 552, 308 P.2d 815 (1957), *cert. denied*, 355 U.S. 841 (1957). In the case at bar the government has established that defendant was absent from the Hong Kong State for a period sufficient to make prosecution valid within the required time span. Since there is no dispute that the Hong Kong authorities acted within a 5-year period, no problem arises under federal law. cf. *Garcia-Guillern v. United States*, 450 F.2d 1189, (5th Cir. 1971).

With respect to the matter of probable cause,

THIS COURT FINDS THAT AMOS DAWE whose

identity was conceded throughout the proceedings and who is the AMOS DAWE sought by the Royal Colony of Hong Kong, has been shown in accordance with standards of probable cause to have violated the laws set forth in the information as more particularly established by the extradition documents in evidence together with testimony of government witnesses. The affidavits with attachments together with the file submitted by the Royal Colony of Hong Kong through the office of the Legal Advisor, Department of State satisfied the Court that there is a valid basis for holding AMOS DAWE to answer in the charging jurisdiction for the several offenses set forth in the information.

To challenge these documents, defendant presented evidence through two witnesses: Robin Humphrey Hill, a Financial and Business Consultant who is a Chartered Accountant as well as a Certified Public Accountant and Terrence McLaughlin who has similar accounting qualifications. Defendant's witnesses, both of whom analyzed the voluminous papers submitted by the Hong Kong government and reviewed the report of Inspector Wadham who prepared the case for the moving party, concluded that the banking transactions which gave rise to the present action were valid on their face and were not a sham as charged. Their testimony relied upon the alleged incompleteness of many documents, which lack double entry bookkeeping and thus do not prove that defendant's transactions were or were not within a closed circle of corporations which he controlled and dominated and which may have received the funds. If the Court accepts the evidence of the Hong Kong government as explained and clarified by the affidavit of Mr. Choh Yet, it must conclude that probable cause

has been shown. It may be that at the trial in Hong Kong the prosecution may be unable to establish the guilt of defendant DAWE beyond a reasonable doubt and that Mr. Dawe will be acquitted. But this is not the standard imposed upon a Court of extradition in making its finding and its order.

While it is possible as interpreted by defendant's witnesses, that Mr. Dawe attempted to comply with the legal requirements of corporate operations in conducting the affairs of the several entities he worked for and dominated, the moving document nonetheless make up a case sufficiently strong to establish probable cause as required by statute. Thus this Court must make its finding that AMOS DAWE has been shown to have violated the several laws charged in the information and must be returned to Hong Kong for a trial of the issues namely, Conspiring to Defraud, Publishing a False Statement and False Accounting as more particularly set forth in Article III of the Schedule of Offenses which is part of the Court's file.

ACCORDINGLY, I certify I have found AMOS DAWE extraditable to the Royal Colony of Hong Kong,

I ORDER AMOS DAWE committed to the custody of the United States Marshal upon the issuance of an Extradition Warrant by the United States Secretary of State. He may remain at large on his present bond pending the issuance of such warrant.

I FURTHER ORDER the Certificate of Extraditability and Order of Commitment together with a copy of all the evidence presented in this case and the formal extradition document be forwarded to the Secretary of State by the Clerk of the Court.

DATE: 28 February 1980.

/s/ Richard S. Goldsmith
Richard S. Goldsmith
Chief United States Magistrate